

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of the City of Glendale for Authority
to Construct an At-Grade Crossing of Flower
Street Across the Los Angeles County
Metropolitan Transportation Authority's Main
Line Tracks in the City of Glendale, Los Angeles
County.

Application 05-06-020
(Filed June 10, 2005)

**SCOPING MEMO AND RULING OF ASSIGNED COMMISSIONER AND
ADMINISTRATIVE LAW JUDGE DETERMINING THE SCOPE, SCHEDULE,
AND NEED FOR HEARING IN THIS PROCEEDING**

This ruling determines this proceeding's scope, schedule, and need for hearing in accordance with Rules 6(a) and 6.3 of the Commission's Rules of Practice and Procedure (Rules).¹

Background

On June 10, 2005, the City of Glendale (Glendale) filed this application seeking Commission authorization to construct an at-grade crossing of Flower Street across the tracks of the Los Angeles Metropolitan Transportation Authority. The tracks are used by Southern California Regional Rail Authority, the National Railroad Passenger Corporation (Amtrak), and the Union Pacific Railroad Company. Glendale stated that the purpose of the crossing is to improve access to the Grand Central Business Center, located west of the

¹ Rules 6(a) and 6.3 require the assigned Commissioner to determine the scope and schedule of a proceeding.

crossing. Glendale explained that in Decision (D.) 01-02-022, this Commission approved the Flower Street at-grade crossing as a replacement for two other at-grade crossings which were closed.

On July 14, 2005, the Commission's Rail Crossings Engineering Section (Staff) filed its protest of the application. Staff opposed the proposed modification of the at-grade crossing because Glendale had not provided an updated traffic study that reflected the expected new commercial development, the design of the crossing was not safe, and may be redundant with other nearby crossings. Staff also contended that Glendale had failed to demonstrate that grade separation was impracticable, as required by Commission regulations, decisions, and the Public Utilities Code.

On September 12, 2005, the assigned Administrative Law Judge (ALJ) issued a ruling setting a prehearing conference for September 30, 2005. However, Glendale informed the ALJ that it intended to supplement its application and that discussions with the staff were ongoing. In response, the ALJ removed the prehearing conference from the calendar, directed the parties to meet and confer, and to file a status report after the supplement was filed.

On March 17, 2006, the ALJ issued a ruling noting that Glendale had not filed the supplement to its application, and requiring that parties file a status report no later than April 14, 2006. On March 29, 2006, Glendale filed its supplement to the application.

The parties submitted a joint status report and prehearing conference statement on April 17, 2006. The parties stated that evidentiary hearings were required and they included a proposed procedural schedule.

The ALJ convened a prehearing conference on May 9, 2006, and granted requests for party status from the Union Pacific Railroad Company, California

Department of Transportation, the Southern California Regional Rail Authority, and the Pelanconi Homeowners Association. The procedural schedule proposed by the parties was adopted at the prehearing conference.

Pursuant to the adopted procedural schedule, Glendale distributed its direct testimony on May 23, 2006.

On May 26, 2006, counsel for The Walt Disney Company (Disney) sent an electronic mail message to the assigned ALJ, with copies to the parties, requesting permission to intervene and for a continuance. A copy of the electronic mail message is Attachment 1 to this ruling. On May 30, 2006, Staff indicated that they did not oppose the request so long as Disney's showing was not merely duplicative of Glendale's.²

After conferring with the assigned Commissioner, the assigned ALJ notified the parties by electronic mail message on May 30, 2006, that the adopted procedural schedule was suspended and that this ruling was forthcoming.

Need for Evidentiary Hearings

Issues of material facts remain in dispute between the parties such that scheduling evidentiary hearings will be necessary.

Scope of the Proceeding

The scope of this proceeding shall be to determine whether Glendale has met its burden of proving that the proposed crossing meets the Commission's standards. In making that determination, the Commission will look for the following:

² Also on that day, the assigned ALJ received a letter dated May 24, 2006, from Steve Foster. A copy of the letter is Attachment 2 to this ruling.

1. A demonstration that there is a public need for the crossing;
2. A convincing showing that Glendale has eliminated all potential safety hazards;
3. The concurrence of local community and emergency authorities;
4. The opinions of the general public, and specifically those who may be affected by an at-grade crossing;
5. Although less persuasive than safety considerations, the comparative costs of an at-grade crossing with a grade separation;
6. Staff's recommendation, including any conditions; and
7. Commission precedent in factually similar crossings.

In D.03-12-018, the Commission applied these factors when considering a proposed at-grade crossing in San Diego. The Commission's decision in the San Diego proceeding may provide guidance to the parties on the type of showing required.

Alternative Dispute Resolution

The Commission strongly encourages all parties to every proceeding to consider whether a means other than litigation can more efficiently and effectively resolve the matter. Here, the factual circumstances regarding existing conditions at the proposed at-grade crossing do not appear to be in dispute. The facts required to evaluate other possible alternatives may be similarly undisputed. Achieving a common understanding of the facts may set the stage for a comprehensive resolution of the issues.

The Administrative Law Judge Division has ALJs trained in all Alternative Dispute Resolution techniques, as well as extensive subject matter experience, available to assist parties in resolving disputes. Requests for appointment of an ALJ to assist with Alternative Dispute Resolution should be made to the Chief Administrative Law Judge.

Procedural Schedule

The following schedule is adopted:

Event	Date
Public Participation Hearing	June 12, 2006, 7 p.m., Glendale Public Library Auditorium, Second Floor, 222 East Harvard Street, Glendale, CA 91205
Parties meet and confer, determine what additional information is required, develop factual stipulation, and consider possibility of Alternative Dispute Resolution	June 2 – 22, 2006
Parties File Status Report	June 22, 2006
Second Prehearing Conference	To be determined based on status report

Principal Hearing Officer

The assigned ALJ, Maribeth A. Bushey, will act as the principal hearing officer in this proceeding.

Ex Parte Communications

This matter is designated as “ratesetting” as defined in Rule 5(c). Therefore, all ex parte communications must comply with Rules 7(c) and 7.1.

IT IS HEREBY RULED that:

1. Evidentiary hearings are needed.
2. The scope of this proceeding is as stated above.
3. The schedule for the remainder of this proceeding is as stated above.

4. Maribeth A. Bushey shall be the principal hearing officer in this proceeding.

Dated June 2, 2006, at San Francisco, California.

/s/ DIAN M. GRUENEICH
Dian M. Grueneich
Assigned Commissioner

/s/ MARIBETH A. BUSHEY
Maribeth A. Bushey
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the filed document is current as of today's date.

Dated June 2, 2006, at San Francisco, California.

/s/ KE HUANG

Ke Huang

Service List

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